



## DEPARTMENT OF THE CORPORATION COUNSEL

**Carrie K.S. Okinaga, Corporation Counsel**  
**Donna M. Woo, First Deputy Corporation Counsel**

### POWERS, DUTIES AND FUNCTIONS

The Corporation Counsel serves as the chief legal advisor and legal representative of all agencies, the Council and all officers and employees in matters relating to their official powers and duties, and shall represent the City in all legal proceedings and shall perform all other services incident to the office as may be required by the Charter or by law.

### ORGANIZATION OF DEPARTMENT

The Department of the Corporation Counsel is organized into the Administration and four other divisions, namely:

1. Counseling and Drafting
2. Litigation
3. Family Support
4. Real Property Tax

### COUNSELING AND DRAFTING DIVISION

The Counseling and Drafting Division is comprised of 20 deputies Corporation Counsel, four paralegal assistants, seven legal clerks and one librarian technician. The division performs the function of legal advisor to all the City agencies, the City boards and commissions, and the City Council and its Committees. In this advisory function, the division is responsible for rendering oral and written opinions to all of the entities it advises, for drafting bills and resolutions for submission to the City Council or the State legislature, for reviewing and approving legal documents to which the City is a signatory, and for attending all the meetings of the City Council, the Council Committees, and the City boards and commissions.

The division performs the legal representation function, representing City agencies, in City and State administrative proceedings. The Division also performs the legal representation function in selected court proceedings such as eminent domain proceedings, quiet title, partitions of land court property, administrative appeals, foreclosures, bankruptcy, interpleader actions for the return of seized property and other matters as may be specially assigned to it.

#### Statistics

For the fiscal year July 2004 to June 2005 the division commenced the year with 3,701 outstanding opinion requests, thereafter received 954 requests, completed and closed 531 requests, had a workload of 4,657 requests during the year, and closed the year with a total of 4,126 outstanding requests. Separate and apart from the foregoing count of opinion requests, the division issued five Memoranda of Law, which responded to five opinion requests received during the year. The division commenced the year with 33 outstanding drafting requests (i.e. requests to draft bills, resolutions, leases, easements, contracts etc.), thereafter received six requests, completed and closed five requests, had a workload of 39 requests during the year, and closed the year with a total of 34 outstanding requests. The division commenced the year with 702 outstanding requests for review and approval of legal documents, thereafter received 4,501 requests, completed and closed 4,547 requests, had a workload of 5,205 requests during the year, and closed the year with a total of 658 outstanding requests.

The division commenced the year with 243 outstanding pre-suit cases (i.e. adversarial proceedings pending before administrative bodies), thereafter received 251 requests, completed and closed 222 requests, had a workload of 494 cases during the year, and closed the year with a total of 272 outstanding requests. The division commenced the year with 516 outstanding case assignments (i.e. cases in any of the state or federal courts), thereafter received 116 requests, completed and closed 78 requests, had a workload of 632 cases during the year, and closed the year with a total of 554 outstanding requests.

### Highlights and Accomplishments

#### Memorandum of Law

The division prepared five numbered memoranda of law in the fiscal year; one opinion request was withdrawn prior to issuance of the memorandum, four opinions were issued in the fiscal year.

Memorandum of Law No. 04-1 advised the Board of Water Supply that it is authorized to enter into privatized contracts for a potable water system and wastewater treatment plant and sewage collection system. (Reid M. Yamashiro)

Memorandum of Law No. 04-2 advised the Department of Parks and Recreation that it is not required to provide a contested case hearing for a denial of an application for a park use permit to conduct a shore water event at Ehukai Beach Park. (Dawn D. M. Spurlin)

Memorandum of Law No. 05-1 advised the Council Parks Committee Chair that the City Charter does not authorize the Council to adopt by ordinance qualifications for the position of Bandmaster of the Royal Hawaiian Band. Additional duties for the position of Bandmaster may be added by ordinance provided the added duties fall within the existing charter function for the position. (Dawn D. M. Spurlin)

Memorandum of Law No. 05-2 advised the Department of Transportation Services on the duty owed to drivers on county highways and the analysis to be performed in determining whether traffic barriers are to be installed for driver safety. (Reid M. Yamashiro)

Memorandum of Law No. 05-3 advises the Department of Information Technology that a gift of services to the Executive Branch is not subject to the Charter provision and Council Resolution requiring Council acceptance of gifts to the City. (Dawn D. M. Spurlin)

## **Development Section**

The Development Section provides legal services to the Departments of Design and Construction, Environmental Services, Parks and Recreation, Facility Maintenance, and Transportation Services, as well as the Board of Water Supply and the Royal Hawaiian Band. The section also advises the Neighborhood Commission, Transportation Commission, Fire Commission, Board of Parks and Recreation, the Zoning Board of Appeals, and the Building Board of Appeals. In addition, the section serves as counsel to the City Council Public Works and Economic Development Committee, and Parks Committee.

Parents, Family, Friends of Lesbians and Gays (PFLAG), et al. v. City and County of Honolulu, et al., USDC Civil No. CV03-00332 HG-KSC (Consolidated); Watland v. City and County of Honolulu, et al., USDC Civil No. CV04-11109 SPK-BMK (Consolidated); Beckman, et al. v. City and County of Honolulu, et al., First Circuit Court, Civil No. 03-1-1451-07 (BIA)

These three lawsuits alleged that the City violated the First and Fourteenth Amendments of the United States Constitution, 42 U.S.C. Section 1983, and Article I, Section 4, of the Hawaii Constitution arising out of the Family Day Parade and Family Day Festival held on July 5, 2003, in Waikiki and a Family Day Festival held on February 14, 2004, in Aala Park.

To resolve the three lawsuits, the City and the Plaintiffs in the three lawsuits, entered into a settlement agreement on December 20, 2004 in which the Plaintiffs agreed to dismiss their lawsuits with prejudice. In return, the City agreed to (1) include a diversity statement on the City's web page within 30 days after execution of the PFLAG settlement agreement, (2) promulgate rules on City sponsorship or co-sponsorship of parades or events with reasonable promptness, (3) review existing ordinances, rules, regulations, stipulations, and policies with respect to parades and other events and endeavor to consolidate all existing rules and stipulations relating to parades, and (4) abide by a set of rules for traffic conage and signage costs for First Amendment parades, including, among other things, waiving the first \$2,500 in conage and signage costs up to \$25,000 per calendar year, with a provision that the ACLU and the City will file a declaratory action in 2008 to litigate the issue of waiving conage and signage costs. (Gregory J. Swartz and Reid M. Yamashiro)

In the Matter of Water Use Permit Applications, Petitions for Interim Instream Flow Standard Amendments, and Petitions for Water Reservations for the Waiahole Ditch Combined Contested Case Hearing, Supreme Court No. 24873 and Case No. CCH-OA-95-1

On June 21, 2004, the Hawaii Supreme Court issued its ruling in the above-entitled action, remanding the case to the Commission on Water Resource Management ("Water Commission") for further findings and conclusions on the following issues: (1) the designation of an interim instream flow standard for windward streams; (2) 2.2 million gallons per day of unpermitted water; (3) the practicability of Campbell Estate and Puu Makakilo, Inc., using alternative ground water sources; (4) the actual water needs of Campbell Estate Field Nos. 115, 116, and 145 (Jefts); (5) the actual water needs of Campbell Estate Fields Nos. 146 and 166 (Garst Seeds); and (6) the State of Hawaii Agribusiness Development Corporation's water use permit for systems losses. Our office represented the Board of Water Supply ("BWS") and the Department of Planning and Permitting ("DPP") in the Hawaii Supreme Court appeal, and filed answering briefs on behalf of BWS and DPP.

The Water Commission appointed Dr. Lawrence Miike as hearings officer to conduct a contested case hearing regarding the issues remanded by the Hawaii Supreme Court. Our office represented BWS and DPP at the remanded contested case hearing on April 5, 2005 and the closing oral arguments on June 1, 2005. Our office also assisted BWS in responding to a production of documents request by Petitioners/Intervenors Haki-puu Ohana, Kahaluu Neighborhood Board, and Ka Lahui Hawaii (the "Windward Parties"), and assisted BWS employees in depositions by the Windward Parties of BWS employees. (Reid M. Yamashiro)

## **Risk Assessment Working Group**

We continued to participate in the State Department of Land and Natural Resources, Risk Assessment Working Group. The Risk Assessment Working Group was established by Act 82, Session Laws of Hawaii 2003, to provide advice to the State Board of Land and Natural Resources regarding the design and placement of warning signs, devices or systems on improved public lands, which includes lands within the City's park system. We provided comments to the proposed draft warnings and management signs and participated in the review of the proposed Administrative Rules for the Design and Placement of Warning Signs on Improved Public Lands proposed by the Risk Assessment Working Group. (Dawn D. M. Spurlin)

## Haiku Stairs

Haiku Stairs is a 3,922-step metal ladder to the top of the Koolau Range, which has been closed to the public since 1987, when it fell into disrepair. The Board of Water Supply owns a portion of the land on which the Haiku Stairs is situated. When the Coast Guard closed its Omega Navigational Aid Station, land adjacent to the Haiku Stairs used for access to the Haiku Stairs went to the Department of Hawaiian Home Lands ("DHHL"). We assisted with the negotiations of a possible land exchange with DHHL to acquire a portion of the former Omega Station to provide parking and access to Haiku Stairs. Subsequent to the negotiations with DHHL, the City offered to transfer ownership of Haiku Stairs to the State Department of Land and Natural Resources for inclusion in the State's Na Ala Hele Statewide Trails and Access Program. (Dawn D. M. Spurlin)

Sierra Club, Hawaii Chapter, et al. v. City and County of Honolulu, et al., USDC Civil No. CV04-00463 HG-BMK

We continue to vigorously defend a federal district court lawsuit filed in April 2004 by the Plaintiffs, Sierra Club, Hawaii Chapter, Hawaii's Thousand Friends, and Our Children's Earth Foundation against the City and County of Honolulu and Frank Doyle in his official capacity as Director of the Department of Environmental Services. The lawsuit alleges various environmental wastewater related violations against the City including: Repeated spills of raw or inadequately treated sewage from the Sand Island, Honouliuli, Kailua, Waianae, and Kahuku wastewater treatment plants and/or from the collection systems that carry sewage to these wastewater treatment plants; Sand Island wastewater treatment plant permit noncompliances, e.g., lack of sewage disinfection, pesticide violations, percent removal of biological oxygen demand and total suspended solids, other plant and system upgrade delays, operation and maintenance violations, and grease program violation; Honouliuli wastewater treatment plant permit noncompliances, e.g., discharge of treated R-1 water and reclamation plant brine water, other discharge and operational problems, and inadequate storm water pollution control plan; Violations of the 1999 and 2002 Sand Island wastewater treatment plant administrative orders issued against the City; and Discharges of pollutants without a permit at Sand Island and Honouliuli wastewater treatment plants in violation of the federal Clean Water Act. In their lawsuit against the City defendants, Plaintiffs seek: Declaratory judgment establishing that the City is in violation of effluent limitations established pursuant to the Clean Water Act; Injunction ordering the City to take all measures necessary and appropriate to curtail its violations of the Clean Water Act effluent limitations; Civil penalties of up to \$32,500 per day of each Clean Water Act violation committed by the City; and Attorneys' fees and costs.

## Finance Section

The Finance Section provides counselling and drafting assistance to the Department of Budget and Fiscal Services, Department of Community Services, Department of Customer Services, Department of Enterprise Services, and Department of Information Technology. The Section also advises a number of Boards and Commissions, including the Real Property Board of Review, Culture and Arts Board, Deferred Compensation Board, Motor Vehicle Responsibility Board, Salary Commission, Oahu Workforce Investment Board, Board of Water Supply Board and Liquor Commission. Assistance to the Liquor Commission is also provided through prosecution of cases before the Commission. In addition, the Section serves as counsel to the City Council Budget Committee.

Center for Bio-Ethical Reform, Inc. v. City and County of Honolulu, USCA No. 03-16650; USDC Civil No. 03-00154 DAE-BMK

The plaintiffs in the case have challenged Honolulu's prohibition banning aerial advertising as a violation of free speech guaranteed in the First Amendment of the U.S. Constitution. The City, together with The Outdoor Circle, has vigorously and thus far successfully defended the ban as a content-neutral time-place-manner regulation that is constitutional because it is substantially related to a significant governmental interest and leaves ample alternative channels of communication open for the plaintiffs to disseminate their views. More specifically, the City has stressed that its ban on billboards and other outdoor advertising devices is crucial to its effort to protect and preserve the outstanding and world-renown scenic views of and from the Island of Oahu and also to protect drivers and pedestrians from distractions that might cause traffic accidents.

Before this year the City successfully resisted plaintiffs' effort to gain a preliminary injunction against the enforcement of the ban, successfully defended that ruling on appeal to the U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit"), and then prevailed at trial. The trial result has again been appealed to the Ninth Circuit, and this year we have, with outside counsel, fully briefed the matter for the Ninth Circuit. We also recruited Scenic America, a nationwide interest group, to participate in this appeal as a friend of the court. Oral arguments will likely take place later this year. (Gregory J. Swartz and Gordon D. Nelson)

## Act 188, 2005 State Legislature

Related to the foregoing case of Center for Bio-Ethical Reform, Inc. v. City and County of Honolulu, we collaborated with The Outdoor Circle and with outside counsel to secure passage of Act 188 by the Legislature and its approval by the Governor. The legislation was drafted to address a new argument, raised late in the case at trial, contending that if plaintiffs embarked from the Honolulu airport, or from an airport on Molokai, and then flew above the coastal waters, but not over land, while displaying their banner to beachgoers at Waikiki and other beaches, then their airplane would be outside the jurisdiction of the City, and hence that the City could not enforce its ban against them. The trial judge did not reach this novel issue, leaving open the possibility that even if the City were to win the appeal, plaintiffs would file a new action featuring their "no-jurisdiction-for-tow-banners-over-the-ocean" theory.

We sought legislation to eliminate any ambiguity in the law as written regarding the ability of the counties to regulate aerial (and ship-based) advertising aimed at beachgoers and other individuals in public places on the island. Although we believe that the existing mix of county and state ordinances and statutes authorizes the City to regulate over-water aerial advertising aimed at our beaches, we deemed legislation advisable in order to forestall further expensive litigation to obtain federal court confirmation of that position. Passage of the Act leaves no doubt regarding the intent and interpretation of these ordinances and regulations, and should save the City, and thus the taxpayers, a substantial amount of money. This enactment also confirms the strong and continuous commitment of this community to protect its outstanding natural beauty so that residents and visitors can enjoy it now and into the future. (Gordon D. Nelson)

### **Collection of Delinquent Real Property Taxes**

We assisted the Department of Budget and Fiscal Services in the collection of \$522,981.56 in delinquent property taxes owned on two large parcels of land in Waikane Valley.

Property taxes had not been paid since 1995 on the parcels, which cover 326.8 acres and 1,116.7 acres. The larger parcel is zoned for preservation and lies within a state conservation district. The smaller parcel is zoned for agricultural use and includes some dwellings with addresses on Waiahole Valley Road. The two parcels were owned by Waikane Investment, which filed for Chapter 11 bankruptcy in 2003, the day before the City was scheduled to sell it at a nonjudicial foreclosure sale because of the tax delinquency. The filing stayed any action by the City from moving forward with the sale.

The bankruptcy case was dismissed in June 2004. Following that, we worked with all the parties involved to conclude a private sale of both parcels to the Royal/Fountains, LLC, which held the mortgage on the property and had sued for foreclosure. The sale produced payment in full to the City of all taxes, interest, penalties and expenses. (Gordon D. Nelson)

### **Telecommunications and Bill 30 (2005), CD2, FD2 (Ordinance No. 05-020)**

We assisted the Department of Information Technology ("DIT") in its efforts to allow telecommunication services providers greater access to City property by, among other things, identifying and addressing various legal concerns related to City Council Bill 30 (2005), CD2, FD2, which (a) establishes a procedure by which City property may be leased to telecommunication services providers, and (b) facilitates the co-location of certain wireless communication services facilities on City property. Additionally, we advised DIT on the Federal Telecommunications Act of 1996, and its interpretation by the federal courts, including: (a) the extent to which the City may receive compensation for the installation, use and occupancy of telecommunication lines within the City's rights-of-ways, and (b) the Act's correlation with State and City regulations or requirements affecting telecommunication services providers. Further, we reviewed various types of agreements, i.e., easements, licenses, leases, and use and occupancy agreements, which DIT contemplates entering into with various telecommunication services providers. (Paul M. Iguchi)

### **Chinatown Community Cultural Center**

We assisted the Department of Facility Maintenance in leasing space in the Daniel S. C. Liu Building, located on Smith and Hotel Streets, for use as a Chinatown Community Cultural Center. The space was leased to Hawaii Heritage Center in partnership with Catholic Charities of Hawaii. The lease provides for the use of the property to improve, develop, and operate a Chinatown Community Cultural Center to serve the Chinatown community by providing a centralized location for community service organizations, including community programs, youth programs, and immigrant services. The project is also intended to serve the community by making available an improved community meeting room and by displaying certain artifacts discovered by the City during construction of its Chinatown projects. The use of the property for any other purpose is to be approved in advance by the City. (Kathleen A. Kelly)

Thomas Kinkaid, et al. v. Board of Review of the City and County of Honolulu, 106 Hawai'i 318, 104 P.3d 905 (October 8, 2004, reconsideration granted in part, as amended, November 10, 2004)

We successfully defended an appeal in the Hawaii Supreme Court of the State Circuit Court's dismissal of the tax appeal filed by the fee owners of units in the Waikiki Shore building. Appellants had filed an appeal to the administrative Real Property Board of Review of their real property tax assessments for the 2000-2001 tax year. Following a hearing, the Board of Review affirmed the City's Real Property Tax Assessment Division's assessments. Appellants appealed the Board's decision to the Tax Appeal Court as well as to the Circuit Court. In affirming the Circuit Court's dismissal of the appeal for lack of jurisdiction, the Supreme Court concluded that the Tax Appeal Court is vested with exclusive jurisdiction over the Appellants' appeal, which by a *de novo* review of the contested tax liability, adequately safeguards Appellants from arbitrary and unreasonable assessments. The Court held that the jurisdiction granted to the Tax Appeal Court under Hawaii Revised Statutes Section 232-17 supplants the more general judicial remedy provided for in Hawaii Revised Statutes Section 91-14 of the Hawaii Administrative Procedures. (Amy R. Kondo)

### **Land Use Section**

The Deputies Corporation Counsel of the Land Use Section serve as principal legal representatives and advisors for the Department of Planning and Permitting ("DPP"). In this capacity, the Land Use Section deputies render legal advice and counseling to DPP, review and draft legal documents, and issue legal opinions. The deputies of the Land Use Section also provide legal representation to DPP in a variety of legal forums (administrative, judicial and legislative), including the Zoning Board of Appeals, the



Building Board of Appeals, the Planning Commission, the City Council, the State Land Use Commission, the State legislature, and the state and federal courts. In these forums, the Land Use Section deputies defend the actions and decisions of the DPP Director and staff against legal challenges, enforce the City land use laws, advocate DPP's position and/or protect its interests. In addition, deputies within the Land Use Section represent the City in condemnation proceedings and proceedings in the Land Court. The Land Use Section also advises the City Council Planning Committee, Transportation Committee and Zoning Committee, and the Kapiolani Park Trustees.

City v. Yee Hop Realty, Limited, et al., First Circuit Court, Civil No. 03-1-2472-12

We assisted with a condemnation case filed by the City to acquire approximately 9.3 acres of real property for the Middle Street Transit Center. The real property was owned by Yee Hop Realty, Limited. The purposes of the acquisition are to have a permanent location for the Handi-Van facilities which are currently operating out of three different locations, to build a bus passenger terminal to accommodate up to 16 buses at one time, and to build a parking facility for Handi-Van and the City's bus employees and for persons who use the City's park-and-ride program. The City has no alternative site for the transit center. The case was resolved for the total just compensation of \$22,060,000. This amount was less than the amounts, which were claimed by the owner for the value of the property, and damages that ranged from \$30,000,000 to over \$40,000,000. (Winston K. Q. Wong and Don S. Kitaoka)

## **Personnel Section**

The Personnel Section advises and represents the City Department of Human Resources and all other City departments on issues relating to labor and employment. These issues include collective bargaining, disciplinary matters, employee benefits and conditions of employment, hiring of personnel, compliance with anti-discrimination laws and other legal requirements, and training. The deputies of the Personnel Section represent the City in arbitration, prohibited practice and other administrative hearings, as well as state courts.

The Personnel Section further advises the Honolulu Police Department, Honolulu Fire Department, Honolulu Emergency Services Department, Oahu Civil Defense Agency, Department of the Medical Examiner and Department of the Prosecuting Attorney on all legal matters. The Personnel Section also provides legal counsel for the Honolulu City Council Public Safety Committee, and, by statute, the Merit Appeals Board for the State of Hawaii.

United Public Workers v. Hannemann, 106 Hawai'i 359, 105 P.3d 236 (2005)

In January 2005, the Hawaii Supreme Court rendered its opinion concerning the City's ability as a public employer to conduct certain administrative functions without being subject to negotiation requirements with public employee unions.

The case was initiated in 2001 when the United Public Workers ("UPW"), which represents City blue-collar workers, filed a prohibited practice complaint against the City at the Hawaii Labor Relations Board ("Board"). The complaint alleged that the City's proposal to transfer a number of manual refuse workers from one jobsite to another was subject to negotiation pursuant to Hawaii Revised Statutes ("HRS") Section 89-9(a).

The City responded that the right to transfer personnel, along with other management rights and obligations, was not subject to negotiation prior to implementation, pursuant to HRS Section 89-9(d).

The Board ruled in favor of the UPW, and ordered the City to cease and desist from transferring the refuse collectors until the City fulfilled its alleged duty to negotiate with the UPW. The City appealed the ruling to the First Circuit Court, which affirmed the Board's ruling.

The City appealed to the Hawaii Supreme Court, asserting that the Circuit Court erred in failing to overturn the Board's erroneous ruling. The Supreme Court's opinion affirmed the City's position that the rights and obligations of a public employer in the State of Hawaii, which include the right to transfer and assign personnel, maintain efficiency of operations, and to take emergency measures to carry out the missions of the public employer, are not subject to the negotiation of any agreement which would interfere with such rights and obligations. The Supreme Court's ruling overturned a longstanding Board practice of balancing management rights against the union's right to negotiate over wages, hours and certain conditions of work on a case-by-case basis. (Paul T. Tsukiyama)

In the Matter of the Arbitration Between Hawaii Government Employees Association and the Department of Planning and Permitting, City and County of Honolulu

This arbitration decision addressed grievances filed by a Department of Planning and Permitting ("DPP") electrical inspector, which in pertinent part alleged (1) an improper and retaliatory transfer of the grievant to another geographical inspection area, and (2) improper requirement that the grievant undergo a fitness for duty examination. All allegations were denied by the arbitrator.

The arbitrator ruled that the City was not required to "consult" over the transfer of an electrical inspector to another geographic area, pursuant to Hawaii Revised Statutes Section 89-9(c) and Article 4 of the Hawaii Government Employees Association ("HGEA") contract. Transfers of DPP electrical inspectors historically occurred on a yearly basis, and did not constitute a "major policy change" which required consultation between the City and HGEA.

In addition, the arbitrator ruled that the City's decision to put the grievant on paid leave while requiring him to undergo a "fitness for duty" examination was not disciplinary or retaliatory in nature. The circumstances of the case indicated that the grievant had become a disruptive force within the workplace, including possible threats of violence, which warranted an assessment by a professional. (Paul T. Tsukiyama)

In the Matter of the Arbitration Between Hawaii Government Employees Association and Department of Facility Maintenance, City and County of Honolulu

These two grievances represent a "procedural" victory for the City. The grievances were filed by the Hawaii Government Employees Association ("HGEA") on behalf of Unit 2 and 4 employees alleging that a change in their job duties (which resulted in the employees' loss of overtime work) was made without consultation with the Union. The City made a pre-hearing motion to dismiss the grievances on the grounds they were filed nearly 10 months after the contractual 20-day deadline for filing the grievances had expired. The arbitrator found that both employees had actual notice of the alleged violations but that the grievances were not filed within the time limits. The arbitrator also dismissed the Union's argument that the grievances were timely since the violations were of a continuing nature. The decision is significant in that it: 1) reinforces the integrity of the grievance procedure deadlines in the HGEA collective bargaining agreements; and 2) confirms that arbitrators have no authority to render a decision on the merits of a grievance where such grievance has not been filed pursuant to the contractual grievance procedures. (Florencio C. Baguio, Jr.)

In the Matter of the Arbitration Between State of Hawaii Organization of Police Officers and Honolulu Police Department, City and County of Honolulu

This grievance was filed by a former police officer who was terminated for violating 11 different provisions of the Honolulu Police Department ("HPD") Standards of Conduct when he responded to a call regarding a male yelling and threatening to cut off the hands of other people at a beach. HPD's investigation found that the officer failed to properly classify the case, arrest the suspect, obtain written statements from witnesses, and was discourteous and failed to provide his name and badge number to the complaining witness. HPD terminated the officer pursuant to a last chance agreement, under which he agreed not to violate any of HPD's Standards of Conduct and which subjected him to "immediate termination from employment" if he committed any such violation. HPD had entered into the last chance agreement with the officer because HPD had terminated him for two earlier, serious offenses and the officer wanted to continue working for Employer. The arbitrator denied the grievance and upheld the discharge because of the "substantial deficiencies" in the officer's handling of the situation. The arbitrator noted that HPD's termination of the officer was not arbitrary, capricious or discriminatory. The impact of the decision is significant in that it: 1) reinforces the integrity of last chance agreements as an avenue for handling problematic employees who seek to rehabilitate themselves in the eyes of the City; and 2) confirms that arbitrators cannot substitute their judgment for those of the employer's "unless the rationale of the action was clearly arbitrary or capricious." (Florencio C. Baguio, Jr.)

Claimant v. Department of Facility Maintenance, City and County of Honolulu, DCD Case No. 2-04-07502

This workers' compensation stress claim was filed by an employee-Claimant who was driving a City vehicle that collided with another City vehicle in May 2004. Rather than stopping and reporting the incident, the claimant drove off and left the scene. Another employee had witnessed the collision and reported it to the police. When asked about the incident, the claimant gave conflicting statements that: 1) she did not hit another vehicle; 2) she could not remember hitting another vehicle; and 3) the resulting damage was only a "nick." Claimant subsequently filed a workers' compensation claim for stress, alleging that the collision should not have resulted in a police report. The City denied her claim. The Disability Compensation Division affirmed the decision of the City and denied the stress claim as not compensable because: 1) the claimant failed to file her claim within the two-year statute of limitations set forth in Section 386-82, HRS, because her stress symptoms manifested as early as August 1989 and the claim was not filed until 2004; and 2) there was no evidence that the claimant was not involved in the accident or that police involvement was not warranted. The significance of this decision is that the two-year statute of limitations for filing a workers' compensation claim is reinforced as a valid affirmative defense to such claims. (Florencio C. Baguio, Jr.)

In the Matter of United Public Workers, AFSCME, Local 646, AFL-CIO and Larry J. Leopardi, et al., HLRB No. CE-01-538

The Union filed a complaint alleging that the City and County of Honolulu committed a prohibited practice by failing to give final and binding effect to an arbitration award in a grievance filed by the Union. The arbitration award sustained the grievance in favor of the Union, which had filed the grievance on behalf of a heavy-duty truck driver who was terminated from employment. The Department of Facility Maintenance ("DFM") had terminated the subject employee for unauthorized use of a City vehicle. However, the arbitrator reinstated the employee without awarding any back pay for the time the employee was terminated.

Upon his return to work, the employee was instructed to report for drug testing prior to engaging in safety sensitive duties. The employee tested positive and was suspended for twenty days pursuant to the parties' collective bargaining agreement. The employee later tested positive a second time and was deemed to have resigned from his job pursuant to the employee's Last Chance Agreement.

The Union requested that the heavy-duty truck driver be reinstated, asserting that the initial drug testing performed on the employee violated the arbitration award. However, the Hawaii Labor Relations Board declined to do so, indicating it would not disturb the consequences of the drug testing provisions which the parties had bargained for and which resulted in the employee's resignation. (Note: Both the City and the Union have appealed portions of the HLRB award.) (Paul K. W. Au)

Claimant v. City and County of Honolulu, Finance Department, Case No. AB 2003-222

The State Disability Compensation Division determined that the claimant was medically stable as of December 1, 2001 and that he did not sustain any additional permanent disability as the result of his November 25, 1995 work accident. Based on the foregoing, the Disability Compensation Division ordered claimant to reimburse the City and County for any benefits he received following December 1, 2001.

Claimant appealed the decision to the Labor and Industrial Relations Appeals Board. In a decision dated November 30, 2004, the Board concluded that the City and County was entitled to the reimbursement for indemnity benefits it paid after December 1, 2001, which amount to approximately \$42,000.00. (Note: The claimant has appealed the decision to the Hawaii Supreme Court.) (Paul K. W. Au)

## LITIGATION DIVISION

The Litigation Division consists of 11 attorneys: a Division Head, and 10 trial attorneys. The Division is supported by 11 support staff which includes a supervisor, three paralegals, four legal clerks, and three messengers.

The Litigation Division represents the City and County of Honolulu before all of the state and federal courts in the State of Hawaii, including the United States District Court, and the Ninth Circuit Court of Appeals. The Division processes and litigates all claims by or against the City, seeks collection of monies owed to the City, and handles Subpoenas Duces Tecum directed to the Honolulu Police Department.

In addition to tort claims, the Litigation Division handles claims relating to contracts, construction, natural resources, employment and other non-tort related matters.

### Statistics

During the 2004-2005 fiscal year, the Litigation Division handled a great number of cases against and for the City and County of Honolulu, including active lawsuits as well as pre-lawsuit claims, as set forth below:

Pending cases as of June 30, 2004: ..... 3,012  
Number of cases completed: ..... 2,817  
Number of cases opened: ..... 1,194  
Pending cases as of June 30, 2005: ..... 1,389

### Highlights and Accomplishments

#### Lawsuits

As in previous years, the Litigation Division continues to be involved in civil rights and personal injury actions filed against the City, its departments and its employees. Following is a brief summary of some of the cases successfully completed by the Division in the past year.

The division was successful at trial in defending a number of lawsuits against the City. In Bohannon v. City, et al, First Circuit Court of the State of Hawaii, plaintiff brought suit alleging that the City and the police officers were negligent in booking her after an arrest causing her to be injured. On November 28, 1999, plaintiff was arrested for driving while under the influence and was taken to the Honolulu Police Department's Central Receiving Division ("CRD") for booking on the arrest. Plaintiff was uncooperative during the booking process and in an effort to keep order, the officers took plaintiff to a holding cell to allow her to "cool off." When plaintiff was taken from this cell several hours later, she had a swollen upper lip and was missing a crown off her front tooth. Plaintiff alleged that she had been assaulted and battered at some point between the booking process and when she was placed in the holding cell. Plaintiff alleged that she was suffering from TMD as a result of the alleged assault and battery. The case was tried to a jury of 12, and after six days of trial, the jury found in favor of the City and the officer. Plaintiff has appealed the jury's verdict to the Hawaii Supreme Court where the case is pending.

In Lum v. City, et al, First Circuit Court of the State of Hawaii, Plaintiff sued the City for negligence as a result of an injury she received while riding her bicycle on a City street. Plaintiff had been riding her bicycle on the same City roads, taking the same route, at least five times each week for at least one year before her accident. On the day of her accident, plaintiff was making a turn on her bicycle and made a wider turn than usual. While making this turn, plaintiff alleged that her bicycle came into contact with gravel on the road that caused her front bicycle wheel to stop turning and she fell. Plaintiff sustained a broken elbow. This case was in the Court Annexed Arbitration Program and after an arbitration hearing, the City obtained an award in its favor. Plaintiff requested a new trial after the arbitration award and the case was tried to a jury of 12. After five days of trial, the jury found in favor of the City. The City was awarded costs of \$14,669.24 and attorneys' fees of \$5,000. Plaintiff has appealed the jury's verdict to the Hawaii Supreme Court where the case is pending.

The division was successful in getting Valenzona v. Carlisle, et al, First Circuit Court of Hawaii, dismissed on motion. In this case, Plaintiff brought suit against Prosecutor Peter Carlisle and eight Deputy Prosecuting Attorneys and two police officers of the Honolulu Police Department alleging false arrest and malicious prosecution. Plaintiff's former wife had obtained a restraining order against plaintiff; however, the restraining order allowed for contact between plaintiff and his former wife to arrange visitation for their children. Plaintiff went to his ex-wife's house ostensibly to discuss visitation for the children; plaintiff's ex-wife called the police and showed the responding officers the restraining order resulting in plaintiff's arrest. The Prosecutor's office prosecuted the case, but it was dismissed by the trial court. The prosecutor's office appealed the dismissal, but the dismissal was upheld by the Appellate Court. The City filed a motion for summary judgment alleging that all defendants were protected by qualified immunity. The trial Court agreed and entered summary judgment for all defendants. Plaintiff has appealed the entry of summary judgment to the Hawaii Supreme Court where the case is pending.

The division was successful in obtaining dismissal of Orso v. Cobb, et al, United States District Court for the District of Hawaii, by motion for summary judgment. In this case, plaintiff filed his lawsuit against two Honolulu Police Department police officers alleging that the officers violated his Fourth Amendment rights by arresting him without probable cause. Plaintiff, a civil process server for the State's Department of Public Safety, went to a shopping center to attempt service of process on a woman (whom he had been unsuccessful in serving at her home). At the shopping center the woman's boyfriend and plaintiff became embroiled in an argument. According to the boyfriend, plaintiff threatened to arrest the boyfriend after the boyfriend questioned plaintiff's credentials. The boyfriend then called the police. When the officers responded, plaintiff identified himself as a Deputy Sheriff, however, since plaintiff did not have a badge, the officers called Public Safety and learned that plaintiff was not a Deputy Sheriff but a civil process server with no law enforcement powers. During this time, plaintiff again attempted to serve the papers on the woman, but the papers fell to the ground. The police officers instructed plaintiff to pick up the papers, but plaintiff refused. Police then arrested plaintiff for impersonating a police officer and criminal littering. The officers filed a motion for summary judgment alleging that they were protected from this lawsuit by qualified immunity. The Trial Court agreed and entered judgment in favor of the officers.

The division was successful in obtaining dismissal of Kamakana v. Kaheaku, et al, United States District Court for the District of Hawaii, by motion for summary judgment. Here, plaintiff alleged that two Honolulu Police Officers lacked probable cause to arrest him for criminal property damage and therefore he was falsely arrested and maliciously prosecuted. Plaintiff alleges that on the morning of October 16, 2002, he got into an altercation with a woman in the parking structure of Kuakini Hospital. According to plaintiff, the woman reported to the security guard that she saw plaintiff run his hands over the surface of a parked car. The security guard waited for the owner of the damaged automobile to return, then called the police. Some time after the incident, the police officers arrived on the scene. One officer asked the woman if she could identify the person who ran his hand over the vehicle and the woman then pointed to plaintiff. The officer then walked over to plaintiff and asked for identification. Plaintiff alleges that he attempted to give the officer a statement, but the Officer refused to listen. Plaintiff further alleges that when the second officer arrived on the scene, he attempted to give her a statement, but she also refused to listen. Plaintiff alleges that thereafter, he was arrested without probable cause. The officers filed a motion for summary judgment alleging that they were protected from this lawsuit by qualified immunity. The trial court agreed and entered judgment in favor of the officers. Plaintiff has appealed the entry of summary judgment to the Ninth Circuit Court of Appeals where the case is pending.

The division was successful in getting Lorin & Carol Silva vs. City, First Circuit Court of the State of Hawaii, dismissed on motion. The Silva case was filed against the Honolulu Police Department alleging negligence resulting in the death of Kevin Silva. On July 4, 2004, Silva was involved in an altercation in Mililani Park and was arrested and transported by police to the Wahiawa Police Station. While he was at the station, his physical condition deteriorated and he was taken by ambulance to Wahiawa General Hospital, where he died. The City filed a motion to dismiss for failure to comply with the requirements of Hawaii Revised Statutes §46-72. The motion was granted and the case was dismissed. Plaintiffs have filed an appeal to the Hawaii Supreme Court where the case is pending.

The division successfully settled several civil rights cases against police officers. (Donnarumma v. City, Pangelinan v. City, Hockenberry v. City). In these cases, police officers were accused of unlawful search, unlawful detention or excessive use of force. The Division also successfully settled a major motor vehicle accident case (Camp v. City), an ADA case (Knox v. City), and a negligence case (Aki v. City).

The division is currently defending the City in several high profile use-of-force and police practices cases (Edenfield v. City, and Mitchell v. City). Several motor vehicle collision cases involving City vehicles or City roadways are also being handled by the Division (Kaina v. City, Limahai v. City, Filimoehala v. City, and Thompson v. City). Several beach drowning or injury cases are being defended by the Division (Hoggs v. City, Sylva v. City, Mendoza v. City, Estates of Powell and Laughlin v. City, Kuhlmeier v. City). The Division also litigates numerous negligence claims filed against the City, (Sullivan v. City, Dickson v. City, and Nunes v. City).

The division has also taken the lead in defending the City in several non-traditional tort cases involving employment practices, sexual harassment, workplace violence and whistleblower claims (Moses v. City, Skellington v. City, Harrell v. City, and Mersburgh v. City). The division has also taken on the task of representing City officials who have been sued in their individual capacity for acts or omissions in their employment (Whang v. City, English v. City). The division is also involved in defending a Declaratory Judgment action in which the promulgation of an administrative rule is being challenged (AOAO Waikiki Shore, Inc. v. City).

Additionally, the division has been litigating claims against the City in actions previously handled by the Counseling and Drafting Division. In the course of the year, the Litigation Division has taken on highly specialized and technical actions such as injunctive relief proceedings (Star Beach Boys v. City), breach of contract actions (KD Construction v. City), and actions relating to the land and diversion of water (Masters Properties v. City, Poland v. City).

## Legislation

The Litigation Division also continued with its advocacy of legislation favorable to the City by drafting proposed bills and testimony regarding tort reform, governmental immunity, and go governmental tort claim procedures.

## FAMILY SUPPORT DIVISION

The Family Support Division ("FSD") provides legal representation for the State of Hawaii Child Support Enforcement Agency ("CSEA") in several types of Family Court proceedings in the City and County of Honolulu. FSD establishes paternity, secures



child support, medical support, and provides enforcement in complex Family Court cases. FSD also handles intracounty and interstate paternity actions.

Historically, the City and County of Honolulu prosecuted parents on Oahu for criminal and civil non-support. Presently, the Federal Government and the State of Hawaii compensate the City for one hundred percent of FSD's operating expenses through CSEA. FSD provides these services pursuant to a cooperative agreement between the Department of the Corporation Counsel, City and County of Honolulu, and the Child Support Enforcement Agency, State of Hawaii, and in compliance with Title IV-D of the Social Security Act.

### **Statistics**

During the 2004-2005 fiscal year 2,506 new referrals for paternity establishment were made to the FSD. An additional 798 cases were carried over from the previous year. Paternity was determined in 2,734 cases during the 2004-2005 fiscal year. An additional 570 cases are pending and should be completed during the 2005-2006 fiscal year.

Pending cases as of July 1, 2004: ..... 798

Number of cases completed: ..... 2,734

Number of cases opened: ..... 2,506

Pending cases as of June 30, 2005: ..... 570

### **Highlights and Accomplishments**

#### **Expedited Paternity Project**

The Family Court of the First Circuit in conjunction with FSD and CSEA has established the Expedited Paternity Project. This project allows parties to other types of Family Court proceedings to voluntarily establish paternity of their children at the same time. The need to do a separate paternity action is thereby avoided. This saves the First Circuit Court and FSD the clerical and legal costs related to the drafting, filing, serving, scheduling, and hearing a paternity case.

#### **Paternity Section of the *Hawaii Divorce Manual***

FSD legal staff wrote a section on paternity and paternity in divorce for the 2001 *Hawaii Divorce Manual* for use by Hawaii family law practitioners and the general public. The section provides an intensive overview of the substantive law, procedures, case digests, forms, and other relevant materials. FSD has updated the section each year. FSD is in the process of writing a paternity section for a new edition of the *Manual* to be published this year.

#### **“Kids First” Program for Paternity Cases**

The Family Court of the First Circuit implemented a very successful program in divorce cases called “Kids First.” Parents and children involved in a divorce are required to participate in an educational program, which focuses on the well being of children during the stressful divorce process. FSD worked with the Family Court to implement a similar program for families involved in paternity cases.

#### **Public Education**

FSD legal staff made an effort to participate in judicial and public education on the issues of paternity and child support and have given educational presentations to many groups and state agencies.

#### **Legislative Changes Initiated by Division**

FSD does not initiate legislative changes to child support and paternity laws. FSD makes recommendations to CSEA and the Agency takes the lead on any legislative changes.

#### **Court Paternity Forms and Procedures**

In a collaborative effort with the Family Court, FSD has been working to modify existing court paternity forms and procedures.

#### **Child Support Guidelines Committee**

FSD attorneys contributed as members of the Family Court's Child Support Guidelines Committee assisting in the revision of the current child support guidelines. The new guidelines became effective October 2004. FSD legal staff participated in training Family Court judges and members of the Family Court bar on the new guidelines.

#### **Training**

FSD legal staff attended numerous professional development-training sessions provided by the Department of the Corporation Counsel, the Child Support Enforcement Agency, the Department of Human Services, the Hawaii State Bar Association and the Family Court.

## **REAL PROPERTY TAX DIVISION**

The Real Property Tax ("RPT") Division is comprised of two attorneys. They are assisted by two support staff.

The RPT Division maximizes intake of real property assessment revenues to the City and County of Honolulu ("City") by efficiently managing cases and vigorously defending the City against real property tax appeals brought in Tax Appeal Court. On occasion, the RPT Division also defends the City against appeals brought before the Board of Review.

The RPT Division provides legal advice and support to the Real Property Assessment Division ("RPA"), and the Department of Budget and Fiscal Services ("BFS"), as necessary to supplement the Counseling and Drafting Division's functions. Also, the RPT Division assists the RPA in drafting and implementing procedures and proposed legislation that will support assessments and resolve disputed legal issues.

The RPT Division coordinates and works with the other counties in developing appraisal procedure and legislation, as well as litigation practices through the ongoing exchange of information and support of legal positions on common issues.

The RPT Division continues to build good working relationships with the Tax Appeal Court Judge and court personnel, while implementing office and court procedures to streamline prompt resolution of cases. The RPT Division continues to obtain information about properties through discovery in court cases to assist the RPA and to optimize the assessment process, and uses the City's private consultant/appraiser for appraisal training and litigation support.

### **Statistics**

During the 2004-05 fiscal year, in resolving appeals before the Tax Appeal Court, the RPT Division recovered about \$13.2 million in total taxes and approximately \$2.6 million above the tax amounts claimed by the appellant taxpayers.

For the fiscal year, the RPT Division opened 224 appeals of real property parcels, had a workload of 550 appeals and completed and closed 183 appeals. The RPT Division also received and completed assignments of requests for opinions and assistance on other City matters. Additionally, the RPT Division generally received about two to four informal requests per week from the RPA for advice and other assistance.

### **Highlights and Accomplishments**

#### **Appeals and Related Matters**

Tax Appeal of Timothy Dalton, Case No. 03-0153. After a trial on the merits, the Tax Appeal Court ruled in favor of the City and against this appellant. The appellant challenged the 2002 assessment of his luxury townhouse unit located on the slopes of Punchbowl, claiming the assessed value exceeded market value because of the City's failure to base its computations on appropriate comparable properties. For trial, the City conducted a re-evaluation of the townhouse, and introduced an independent bank appraisal, which indicated a property value higher than the assessment. Despite the testimony of the appellant's realtor against the City, the Court found that the City's testimony and evidence supported the assessed value, whereas the preponderance of the credible evidence did not support the value alleged by the appellant.

Tax Appeal of Waikiki Land L.P., Case No. 04-0008. Appellant contested the assessed value of 48 condominium units located within two two-story walk-ups on property located adjacent to The Wave in Waikiki. Although the assessed value had increased from the previous year, the assessment reflected a discount of \$15,000 per unit for rehabilitation costs. After lengthy negotiations between the Appellant and the City, appellant wisely withdrew its appeal, allowing the City to realize \$23,000.

Poe v. Real Property Assessment Division, Civil No. 04-1-1750-09. The RPT Division successfully defended the RPA against this lawsuit filed in the First Circuit Court. The lawsuit alleged RPA had violated the Uniform Information Practices Act (HRS Chapter 92F) in responding to plaintiff's requests for real property assessment records and information. Upon a motion for summary judgment, the Court ruled in favor of the City, finding RPA had not violated HRS Chapter 92F, and that the issue was "moot" because RPA had already produced the requested records to plaintiff.

#### **OTHER MATTERS**

During the fiscal year, the RPT Division provided advice and assisted on a variety of other matters such as:

Time Share Classification. The RPT Division assisted the RPA in preparing testimony in opposition to proposed legislation which would have classified time share condominiums located in the apartment precinct without 24-hour front desk amenities differently from other time share units.

Foreclosure Notice and Sale. The RPT Division assisted the Collections branch of BFS by preparing an opinion regarding the due diligence that must be undertaken to ascertain the address of Japan nationals for service abroad of a foreclosure notice under ROH Section 8-5.2. The RPT Division also assisted Collections with the non-judicial foreclosure sale held to satisfy the City's outstanding real property tax liens, and prepared the deeds for the properties sold.

Real Property Tax Relief. The RPT Division prepared an overview of tax relief measures taken in other counties and monitored for legality the tax relief bills introduced in the City during the first half of 2005.

Public Service Company Tax. The RPT Division assisted the RPA by preparing an opinion regarding the financial impact a recent State Tax Appeal Court decision would have on the collection of the public service company tax from private sewer companies.

Uniform Information Practices Act (HRS Chapter 92F). In conjunction with the Court's favorable ruling in *Poe v. RPA*, discussed above, the RPT Division worked with the RPA to modify its procedures and forms for responding to requests for information made by taxpayers, and to monitor its compliance.

## **ETHICS COMMISSION\***

### **Charles W. Totto, Executive Director and Legal Counsel**

The purpose of the Ethics Commission is to ensure that City officers and employees understand and follow the standards of conduct governing their work for the public. The Commission implements its objectives through a balance of education and training programs, advisory opinions and enforcement actions. The most common areas of inquiry are financial and personal conflicts of interest, gifts, political activities, post-government employment and the misuse of government resources.

The ethics laws are found in Article XI of the Revised Charter and Chapter 3, Article 8, of the Revised Ordinances. To find out more about the Commission and its activities, visit our web site at [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics). The web site has information about the Commission's meetings, procedures, the standards of conduct, and useful guidelines for the public and employees and officers.

The seven commission members are appointed by the Mayor and confirmed by the City Council. Commissioners serve staggered five-year terms. The members during FY05 were:

	<b><u>TERM EXPIRATION</u></b>
Robin D. Liu, Chair .....	December 31, 2005
Lex R. Smith, Esq., Vice-Chair .....	December 31, 2006
Susan H. Heitzman .....	December 31, 2005
Lolinda D. Ramos .....	December 31, 2003
Raymond H. Fujii .....	December 31, 2006
Matthew H. Kobayashi .....	December 31, 2009

The commission is staffed with an executive director/legal counsel and a legal clerk. The Commission's budget for FY05 was \$158,784.

*\*The Ethics Commission is attached to the Department of Corporation Counsel for administrative purposes only.*

### **Education and Training**

The commission staff continued its mandatory ethics training for all elected officials, managers, supervisors and board and commission members. Honolulu's mandatory ethics training programs is one of the most ambitious in the United States. In FY05 we trained 335 officials, bringing the total to over 3,000 public servants trained since the law was enacted in 2001. In addition, the commission staff presented our "Ethics Checklist" orientation to 406 new City officers and employees.

As a result, all current City officials and more than half of the City's workforce have received some form of ethics training. Some agencies are taking advantage of the training beyond those who are required to attend. For example, this year the Department of Corporation Counsel required all attorneys to participate in training. All councilmembers and their staffs, as well as all Fire Department recruits, also attended training tailored to their work situations.

These programs continue to greatly reduce the number of unintentional ethics violations. In addition, these programs should increase public confidence that our City employees and officers are working in an ethical way.

### **Advice and Enforcement**

In the past fiscal year, the commission received 451 requests for advice and complaints. By the end of the FY05, we had responded to 425 of these.

The commission held nine meetings and issued five formal advisory opinions, finding violations of the standards of conduct in two cases. In one case, an administrative assistant violated the fair and equal treatment policy by granting contracts to family members and to reward political campaign workers. The commission recommended a two-week's suspension from work without pay, which was adopted by the department that employed the assistant. In the second case, the commission held that a City official may not write a letter of recommendation using his City title and stationery on behalf of a development project that was unrelated to the public official's work duties.

In addition, the commission received and reviewed 19 disclosure of conflict of interest forms and 582 financial disclosure statements.

The commission submitted testimony to the City Council regarding two measures. The commission continued its support of Resolution 03-240. This resolution would have allowed the voters in the November 2004 election to determine if the commission should be authorized to impose a civil fine on officials who violate the City's ethics laws. The resolution failed in a vote by the full Council, but will be advanced before the Charter Commission. Hopefully, voters will be presented the issue in 2007.

The commission revised its Guidelines on Employment after Leaving City Service to explain the law and incorporate answers to common questions about post-employment restrictions for former officers and employees.

Our web site was updated to include all its formal advisory opinions, along with an updated index. The commission received 4,475 hits on its web site in FY05.

**Projects planned for the next year include:**

1. Advocating that amendments to the City Charter be brought to the voters, including:
  - a. Authorizing the Ethics Commission to impose civil fines on officials who violate the ethics laws;
  - b. Ensuring that the ethics laws apply to the members of the Charter and Reapportionment Commissions;
  - c. Making legally valid the process for impeachment of elected officials; and
  - d. Assuring the independence of the Ethics Commission.
2. Taking on the role of regulating lobbyists;
3. Continuing the mandatory training for City managers, supervisors, elected officials and board and commission members;
4. Working with the administration and the Council to pass laws that will provide new regulatory tools to prevent and punish ethics violations; and
5. Revising its ethics guidelines.